

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXXX

Petitioner

v

File No. 121932-001-SF

Blue Cross Blue Shield of Michigan
Respondent

Issued and entered
this 17th day of October 2011
by R. Kevin Clinton
Commissioner

ORDER

I. PROCEDURAL BACKGROUND

On June 16, 2011, XXXXX (Petitioner) submitted a general insurance complaint to the Office of Financial and Insurance Regulation. After an evaluation of the complaint, it was determined it should be treated as a request for an external review by the Commissioner under Public Act No. 495 of 2006, MCL 550.1951 *et seq.* The Commissioner reviewed the request and accepted it on June 23, 2011.

The Petitioner is enrolled for vision care coverage through a self-funded group plan of XXXXX, a local unit of government as defined in Section 1 of Act 495, MCL 550.1951. Blue Cross Blue Shield of Michigan (BCBSM) administers the plan and is the contracting entity under Section 2(1) of Act 495, MCL 550.1952(1). The Commissioner immediately notified BCBSM of the request for an external review and asked for the information it used to make its adverse determination.

Under Section 2(2) of Act 495, MCL 550.1952(2), the Commissioner conducts this external review as though the Petitioner was a covered person under the Patient's Right to Independent Review Act (PRIRA), MCL 550.1901 *et seq.*

The issue in this external review can be decided by a contractual analysis. The Commissioner reviews contractual issues pursuant to Section 11(7) of PRIRA, MCL 550.1911(7). This matter does not require a medical opinion from an independent review organization.

II. FACTUAL BACKGROUND

The Petitioner's vision care benefits are defined in the *Vision Care Group Benefit Certificate Series A80* (the certificate).

On December 18, 2010, the Petitioner ordered eyeglasses that came with polycarbonate lenses. The provider's charge for the lenses was \$99.99.¹ When the claim was processed, BSBSM paid its approved amount for the frame but denied coverage for the lenses, indicating on the explanation of benefits statement, "Your contract doesn't cover this item. . . ."

The Petitioner appealed the denial. BCBSM held a managerial-level conference on April 7, 2011, and issued a final adverse determination dated May 5, 2011.

III. ISSUE

Is BCBSM required to pay for the Petitioner's polycarbonate lenses?

IV. ANALYSIS

BCBSM's Argument

In its final adverse determination BCBSM explained its reason for denying coverage:

. . . We are unable to allow payment for polycarbonate lenses because they are not a benefit of your vision plan through XXXXX.

You are covered under the *Vision Care Group Series A80*. The plan pays for eye glass lenses when prescribed or dispensed by a physician, optometrist, or optician. The lenses may be molded or ground, glass or plastic. Special lenses such as polycarbonate are not covered.

Petitioner's Argument

The Petitioner states there is nothing in the certificate that specifically excludes polycarbonate lenses from coverage. In a May 24, 2011, letter to BCBSM, the Petitioner asked:

I would appreciate an explanation of why polycarbonate glasses are excluded from benefits. And please specify what materials (if any) are covered by my plan so I can order an additional pair of glasses. If no materials are acceptable or available it would be a good idea to state that glasses are not covered in this program. . . .

¹ According to the explanation of benefits statement dated February 17, 2011, the out-of-state provider does not participate with BCBSM.

In a June 9, 2011, letter submitted with his initial insurance complaint, the Petitioner stated he was:

. . . questioning how polycarbonate lenses are anything other than “lenses molded or ground, glass or plastic.” In fact [polycarbonate] is the only “standard” material for lenses, since plain glass is no longer used. The only other choice is plastic, which is also what polycarbonate is. . . .

Commissioner’s Review

The certificate, in “Section 3: Coverage for Vision Care Services,” contains the following language regarding coverage for lenses:

We pay for eyeglass lenses when prescribed or dispensed by a physician, optometrist, or optician.

- Lenses may be molded or ground, glass or plastic.
- Lenses must be equal in quality to the first-quality lens series made by American Optical, Bausch & Lomb or Tillyer and Univis.
- The lens blank must meet Z80.1 or Z80.2 standards of the American National Standards Institute.
- The lenses must be colorless or have Rose tints #1 or #2 if therapeutically necessary. The provider may charge you for additional tinting other than for necessary Rose tints #1 or #2.
- The lens blank of a standard lens must not exceed 65 mm in diameter. The provider may charge you for the difference in cost between standard and oversize lenses.

We pay for the following special lenses:

- Myodisc
- Lenticular myodisc
- Lenticular aspheric myodisc
- Aphakic
- Lenticular aphakic
- Lenticular aspheric aphakic

We do not pay for aphakic lenses for aphakia (lack of natural lens). These may be covered by your hospital-medical-surgical plan.

We pay for prism, slab-off prism and special base curve lenses when medically necessary.

The certificate, in “Section 4: Vision Care Services Not Covered,” also contains these exclusions:

We do not pay for the following:

- Additional charges for:
 - Lenses tinted darker than Rose Tint #2
 - Anti-reflective and photosensitive lenses
 - Oversize lenses
 - Sunglasses

After reviewing these provisions, the Commissioner, like the Petitioner, is puzzled by BCBSM’s denial of coverage. The certificate does not include the language from BCBSM’s final adverse decision that “[s]pecial lenses such as polycarbonate are not covered.” Moreover, neither the certificate nor the position paper BCBSM submitted for this review explain the basis for excluding polycarbonate lenses.

The certificate states lenses may be “glass or plastic.” “Polycarbonate” is defined as:

a synthetic thermoplastic resin, a linear polymer of carbonic acid, used for molded products, films, and nonbreakable windows.²

If thermoplastic can be differentiated from plastic, BCBSM has failed to do so. The Commissioner finds that polycarbonate meets the common definition of “plastic.” Because polycarbonate is a plastic, polycarbonate lenses are a covered benefit under the certificate.

The Commissioner finds that BCBSM’s denial of reimbursement for the polycarbonate lenses was not consistent with the terms of the certificate.

V. ORDER

Blue Cross Blue Shield of Michigan’s final adverse determination of May 5, 2011, is reversed. BCBSM shall cover the Petitioner’s lenses ordered on December 18, 2010, subject to the terms and conditions of the certificate, within 60 days of the date of this Order and shall, within seven (7) days of providing coverage, furnish the Commissioner with proof it has implemented this Order.

² polycarbonate. Dictionary.com. *Dictionary.com Unabridged*. Random House, Inc. <http://dictionary.reference.com/browse/polycarbonate> (accessed: October 24, 2011).

To enforce this Order, Petitioner may report any complaint regarding implementation to the Office of Financial and Insurance Regulation, Health Plans Division, toll free (877) 999-6442.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than 60 days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.